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M., a hack-driver, agreed with S., the proprietor of the Revere House, to keep at a railroad depot, good carriages, &c., on the arrival of certain specified trains, to carry passengers to the Revere House, and in consideration therefor S. agreed that M. should carry all the passengers from the Revere House to these trains, and should have the privilege of putting on his coaches and the caps of the drivers, as a badge, the words "Revere House." A similar agreement had existed between S. and B., and had been terminated, but B. still continued to use the words "Revere House" as a badge on his coaches and on the caps of his drivers, although requested not to do so by S., and endeavored to divert, and did divert, passengers from M.'s coaches into his own. In an action of tort by M. against B., for using said badge and diverting passengers; *held*, that M., by his agreement with S., had an exclusive right to use the badge as indicating that he had the patronage of the Revere House for the conveyance of passengers, and that if B., by using the badge, had falsely held himself out as having the confidence and patronage of that house, an action would lie against him therefor, without proof of specific damage, and such damages might be given as the jury should think were warranted from the whole evidence in the case. Marsh *v.* Billings, 654.

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In Vermont a promissory note given by a deputy sheriff to the sheriff upon his appointment as deputy, has no sufficient legal consideration, and is therefore void. Ferris *v.* Adams, 441.

Where different persons successively indorse accommodation paper, before it goes into circulation, for the mere purpose of obtaining a discount for one of the parties, they should be held to undertake jointly or severally to pay it, upon proper demand and notice, if the party obtaining the discount does not meet it at maturity. Pitkin *v.* Flanagan, 617.

As between accommodation indorsers, who all sign before the paper is put in circulation, at the request of the person for whose benefit it is made and to give him credit, the order of the indorsement raises no presumption of any obligation among themselves, different from what grows out of the other facts in the case. Ib.

Where property is sold for the purpose of defrauding creditors, and a promissory note taken to secure the payment of the consideration money, the contract being illegal and void, no action will lie by the payee to recover on such note. Niver *v.* Best, 183.

Where such contract has been *executed*, it is binding upon the parties, though void as to creditors; and no action will lie by one party against the other to recover back money paid or property delivered under such contract. But where such contract is *executory*, the law will neither enforce its performance nor give damages for a breach of it. Ib.

And though such note is given subsequently, yet if there be no new consideration, and it be made, either in pursuance of the original fraudulent agreement, or in furtherance of its object, it will still be void. Ib.

It will not make such note valid to include in it a sum honestly due and growing out of a different transaction. Where part is void the whole is void; and the party must sue on the original consideration to recover for such indebtedness. Ib.

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Where the defendant corporation was chartered to convey, as a common carrier, among other things, "all other articles and things usually transported by water on said Lake Champlain," and it was proved that at the date of the charter, bank bills were usually carried by the water craft upon that lake; *held*, that the defendant corporation was a common carrier of bank bills. Farmers and Mechanics Bank *v.* The Champlain Transportation Company, 122.

Where the captain of a steamboat, engaged in the carrying business, has the entire control of the boat, he be-

comes the general agent of the owners of the boat, to carry all such commodities as he may choose to contract to convey within the scope of the power of the owners of the boat, and the owners are *primâ facie* liable for the captain's contracts. Ib.

How far a common carrier may limit his responsibility by a notice brought home to the owner of the goods at the time of delivery—*Quære.*

A common carrier, by a general notice brought home to the owner of the things delivered for carriage, may limit his responsibility for carrying certain commodities beyond the line of his general business, or he may make his responsibility depend upon certain conditions. Ib.

The question of the extent and determination of the transit or carriage by a common carrier—considered. Ib.

Where a railway company receives goods at one terminus to carry them to another, they are answerable for any loss that may occur between them, although it may be on a line of railway that does not belong to such company; and the receipt of goods so to be carried is *primâ facie* evidence of such liability; confirming *Muschamp* v. *The Lancaster and Preston Junction Railway Company*, (8 M. & W. 421.) Watson *v* The Ambergate, &c. Railway Co., 136.

A prize had been offered for the best plan and model of a machine for loading colliers from barges, and plans and models intended for the competition were to be sent by a certain day; the plaintiff sent a plan and model accordingly by a railway, but through negligence it did not arrive at its destination until after the appointed day · — *Semble*, the proper measure of damages in such case is the value of the labor and materials expended in making the plan and model, and not the chance of obtaining the prize, as the latter is too remote a ground for damages. Ib.

A declaration against a railway company alleged that the plaintiff, at the request of the defendants, became a passenger for hire in one of their trains, for reasonable reward to the defendants in that behalf; and that in consequence of the carelessness, negligence, and want of skill of the defendants and their servants, the train ran against another train on the line, whereby the plaintiff was injured. The defendants pleaded the general issue, with a traverse of the plaintiff being a passenger, &c. At the trial it appeared that the train in question was hired of the company by a society for an excursion, the tickets for which were sold and distributed by the secretary of the latter body, from whom the plaintiff purchased his, and that the accident was occasioned by the train running, in the dark, against another train which was standing still at an intermediate station on the line: — *Held*,

First, that the mere fact of the accident having occurred, was *primâ facie* evidence of negligence on the part of the defendants; and,

Secondly, that there was evidence to go to the jury in support of the allegation that the plaintiff became a passenger for hire with the company. Skinner *v*. The London Railway Company, 83.

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A memorandum, acknowledging the receipt of a specified number of barrels of apples, "in store," *to be forwarded to New York*, at so much per barrel, is a *contract* between the parties; and the general rule is therefore applicable, that parol evidence cannot be received to add to or vary its terms. Niles et al. *v*. Culver et al., 72.

All oral negotiations or stipulations between the parties, preceding or accompanying the execution of such an instrument, are to be regarded as merged in it; and the receipt is to be treated as the exclusive medium of ascertaining the agreement entered into by the parties. Ib.

A distinction exists between a mere receipt acknowledging money paid, and a receipt containing an agreement, condition or stipulation between the parties; the latter is in

the nature of a contract, and cannot be varied by parol evidence. Ib.
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Demand, 209, 210.
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A testator, by his will, executed since the revised statutes went into operation, devised as follows: "Fourthly, I do give, devise, and bequeath to my beloved daughter, Julia Maria, the wife of B. O. T., and such her child or children as shall at her decease be living, and shall have attained, or shall thereafter attain, the age of twenty-one years, all and singular the rest and residue of my real and personal estate and property, of every description, of which I may die seised and possessed or entitled unto, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, to and for her sole and separate use, to all intents and purposes, as though she were a *feme sole*, and unmarried."
Held, 1. That the words "and such her child, or children," &c., were words of *purchase*, and not of *limitation*, and if not contrary to the statute against perpetuities, that Mrs. T. took only a life estate, with remainder to such of her children as should survive her, and should have attained, or should after her decease attain the age of twenty-one years.
2. That such remainder to the children was not vested, but contingent.
3. That assuming such contingent remainder to be valid, the property, intermediate the death of Mrs. T., and the time when her eldest child became of age, descended to, and vested in, the heirs at law, liable to be devested on the happening of the contingency upon which the remainder depended.
4. That when the contingency occurred by the eldest son becoming of age, the remainder vested in him, subject to be devested, so far as to let in to their shares respectively, such of the other children of Mrs. T. as should become twenty-one years of age.
5. That the estate, being limited on Mrs. T.'s life and five minorities, and being inalienable during such limitation, the contingent remainder to the children of Mrs. T. was void as being contrary to the statute against perpetuities; and that the

legal consequence was, that as to the moiety of the estate thus disposed of, it descended to Mrs. T, as the heir at law of the testator, and united with her life estate.

6. That the devise was not a joint devise to Mrs. T. and her children.

7. That the devise over was equally void, as to the personal estate. Tayloe *v.* Gould et al., executors, &c., 60.

By the third clause of the same will, one moiety of the testator's estate was devised to his wife for life, and by the third devise of the fourth clause, was disposed of as follows: "But in case my said wife, A. E., shall be living at the time of my death, and shall die, my said daughter, J. M., surviving, or any of her my said daughter's children, who shall have attained, or shall thereafter attain, the age of twenty-one years, surviving my said wife, I do then and in such case give, devise and bequeath to my said daughter, J. M., if living at the time of the death of my said wife, or in case of her death, then to such her child or children as shall be living at the time of the death of my said daughter, and shall then have attained, or shall thereafter attain, the age of twenty-one years, her, his, or their heirs and assigns, all and singular the real and personal property herein before devised to my said wife, for and during her natural life." *Held*, that this devise was also void, both as to the real and personal estate, as contrary to the statute prohibiting perpetuities; being a limitation for two lives not only, but also for five minorities, in addition; and that the objection to its validity was not obviated by the fact of Mrs. T. dying before the testator's widow. Ib.

The validity of a devise must be determined from its terms, and without reference to future contingencies. Ib.

A testator, by his will, devised an estate to his wife for life, with remainder in fee to his nephew, with a proviso, that in case the testator's wife should at his decease be pregnant with a child, the devise to the nephew was to cease, and such child was to take the remainder in fee. At the time of making his will the testator had no child, and he was expecting to die; but a child was afterwards born in his lifetime, and the testator made a codicil to his will, devising after-acquired property to such child. The wife was not *enceinte* at the death of the testator: — *held*, that the child born in the testator's lifetime had no estate under the will, and that, as there was no posthumous child, the devise to the nephew took effect. Doe d. Blakiston et al. *v.* Haslewood et al., 76.

The case of White *v.* Barber (5 Burr. 2703) is not law.

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Divorce, 311, 375, 431.

The Statute of 1843, authorizing the Superior Court to grant divorces for habitual intemperance, generally embraces those cases only where intemperance is produced by the use of alcoholic liquors. Barber *v.* Barber, 375.

The Statute of 1849, allowing said Court to grant divorces for any misconduct of the respondent that permanently destroys the happiness of the petitioner and defeats the purposes of the marriage relation, embraces cases where the misconduct consists in the habitual and immoderate use of either alcoholic or narcotic substances. Ib.

If the misconduct of the respondent is the legitimate fruit of the misconduct, fault, or gross neglect of duty of the petitioner; or if it results from the mutual and essentially divided fault of both parties, an application for divorce, under either of said acts, should be denied. Ib.

The Court of Common Pleas (which has original jurisdiction in cases of divorce, with an appeal to the Supreme Court,) has the power to vacate a decree of divorce entered at a previous term, where it was obtained by a fraud on the Court, although a marriage had been contracted subsequently to, and on the faith of, such

divorce, with a party thereto, and issue born. Allen *v.* Maclellan, 431.

A decree, reciting that the former decree was vacated for such causes, is conclusive after the time for an appeal has elapsed; and this, though there is nothing on record to show that the proof of the fraud was made, and although it was admitted that when service of notice of the intended application to vacate was made at the reputed residence of the original libellant, she was out of the State. Ib.

Divorce, law of, in California, 525.

Divorce, power to vacate decree of when obtained by fraud, 431.

Domicil, 521, 542, 634.

Quære: — Where the charter of a city requires a two years' domicil within its limits as a qualification for the mayoralty, and one accepts an office from the city councils, who are elected under that charter, the tenure of which requires his residence to be without the city's limits, does he lose the domicil necessary for the former office, while holding the latter? *Held*, by GIBSON, C. J., he does not. The doctrine seems to be, that if the latter office was for life, it involves a change of domicil; if temporary, it does not. Commonwealth *v.* Jones, 542.

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E.

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Ejectment, summary process in, 330.

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The taking of private property for public use, can only be justified by virtue of the sovereign right of eminent domain. The People *v* White, 177.

Before the organization of our government this right was recognised throughout the civilized world, and its exercise restricted to cases of public necessity and just compensation. Ib.

The provisions on this subject in the constitutions of the United States and of the State of New York, are only declaratory of a previously existing universal principle of law. Ib.

Where land belonging to a citizen was taken under the act of 1819 for the construction of the Erie canal, and used as the bed of the canal for a number of years, and was afterwards abandoned by the State, and the canal located in a different place, such land, when no longer necessary for public use, reverted to the original owner, although the act under which it was taken, declared it should vest in the State in fee simple. Ib.

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Estate, termination of the, 330.

Estoppel, 514.

Evidence, 35, 36, 89, 141, 211, 213, 369, 384, 452, 499, 506, 512, 574, 629, 634, 677.

In a suit by the next of kin of a testator, challenging a residuary gift made by his will to his executors, on the ground that it was made on a secret trust for an illegal purpose, which the executors had promised to perform, the Court *held*, that communications had between the testator and solicitor employed by him to prepare the will, with reference to the will and the trusts thereof, were not privileged; but that communications with reference to the will and the trusts thereof, had after the death of the testator, between the solicitor and the executors, who had continued to employ him as their solicitor, were privileged. Russell *v.* Jackson, 603.

The rule that communications between solicitor and client are privileged, does not, in the absence of an illegal purpose by a testator, apply to communications had between him and his solicitor, with reference to the dispositions contained in his will; nor will such communications be protected, on the ground that they may lead to the disclosure of an illegal purpose entertained by the testator. Ib.

A lunatic patient, who had been in confinement in a lunatic asylum,

and who labored under the delusion, both at the time of the transaction and of the trial, that he was possessed by twenty thousand spirits, but whom the medical witness believed to be capable of giving an account of any transaction that happened before his eyes, and who appeared to understand the obligation of an oath, and to believe in future rewards and punishments, was called as a witness on a trial for manslaughter: — *held*, that his testimony was properly received in evidence; and that where a person under an insane delusion is called as a witness, it is for the judge, at the time, to say whether he is competent to be a witness, and it is for the jury to judge of the credit that is to be given to his testimony. Regina *v.* Hill, 141.

A person convicted of perjury is an incompetent witness, though he has been pardoned by the Governor, and the pardon purport to restore him to all his civil rights; the Legislature having provided, that such convict shall not be received as a witness till such judgment be reversed. Houghtaling *v.* Kelderhouse, 437.

And such is the law, though the exclusive right of pardon be vested in the Governor. Ib.

Such incompetency to testify is a rule of evidence, rather than a punishment of the offence. Ib.

In an action for injury to the person, groans or exclamations of pain at any time; are admissible in evidence, though referred by word or gesture to the locality of the pain, being expressions of present pain or agony; but any statement of his condition, made as a narrative, or in answer to a question, is inadmissible. Bacon *v.* Charlton, 499.

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Executor and administrator, 36, 383, 388, 569, 630
Executor's bond, 35.

A debt due by an intestate, cannot be set off against one due to his administrator. Steel, Ex'r, *v.* Steel, 503.

The executor or administrator, sued in his representative character for a debt of his decedent, is not prevented from pleading the Statute of Limitations by any acknowledgment he may have made of the debt, whether such acknowledgment were made before or after the debt was barred by the statute. Ib.

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Forcible entry and detainer, 32, 186, 630.
Foreclosure of mortgage, 37.
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Forfeiture, 203, 235, 628.

By the act of Congress of Feb. 18, 1793, "If any vessel is employed in any other trade than that for which she is licensed, such vessel shall be forfeited." By the act of July 29, 1813, special licenses were granted to vessels engaged in the codfishery, and bounties were given on the vessels complying with certain conditions. By the act of May 24, 1828, special licenses were granted to vessels engaged in mackerel fishing. Under these statutes, and in fact, how far codfishing and mackerel fishing should be considered different trades or employments — *Quære.* U. States *v.* Reindeer, 235.

But whether codfishing and mackerel fishing are, under these statutes and in fact, different trades or not, vessels under a license to catch cod will not be forfeited by catching mackerel, so long as the catching of mackerel is incidental merely, and not the main object of pursuit. Ib.

To work a forfeiture under these statutes, the old employment must have been abandoned, and a new trade must be permanently and exclusively pursued. Ib.

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Fraudulent contract, 183.

Free school law of New York unconstitutional, 473.
Freight, 87.
French code, 311.
Fugitive Slave Act, 301.

The provisions of the 6th sect. of the fugitive slave act, that "The certificate of the commissioner shall be conclusive, &c., and shall prevent all molestation, &c , by any process issued by any Court, judge, magistrate, or other person whatsoever," applies only to a certificate which appears on its face to be granted, or by a reasonable interpretation of its language might have been granted, in conformity with the act, and in pursuance of the authority thereby conferred, by a person having power to grant it, and proceeding in a manner warranted by the act. John Davis, petitioner, 301.

The provisions of the 10th section of the fugitive slave act, "that when any person held to labor, &c., *shall escape*," are clearly prospective, and inapplicable to the case of an escape occurring before the passage of the act. Ib.

Under article i. sec. 8, and article iv. sec. 3, of the Constitution of the United States, Congress has authority to pass a law for the reclamation of fugitive slaves. Thomas Sims, petitioner, 16.

The Act of Congress of Sept. 18, 1850, being the same in principle as, and differing only in its details from the Act of Congress of Feb. 12, 1793, which has been decided to be constitutional, is constitutional. The authority conferred by it upon commissioners of the Circuit Court, and its making no provision for a trial by jury in favor of the alleged fugitive, do not make it unconstitutional. Ib.

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Goodrich, opinion of Charles B., Esq. 335.
Grand jurors, duty and power of, 523.
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H.

Habeas corpus, 269, 335.

Before a writ of *habeas corpus* is granted, sufficient probable cause must be shown; but when it appears from the party's own showing, that there is no sufficient ground *primâ facie* for a discharge, the Court will not issue the writ. Thomas Sims, petitioner.

How far it is competent for one Court by a writ of *habeas corpus* to the executive officer of another Court, after the prisoner has, by the execution and return of the warrant, come under the control of such Court, to take a prisoner from the custody of another Court or tribunal—*Quære*.

Where it appears from the face of the certificate that the adjudication was made without evidence, the error can be corrected on *habeas corpus*. John Davis, petitioner, 301.

By the common law of England and this country, the writ of *habeas corpus* is not grantable of mere course, nor without probable cause shown. Ib.
Heineccius, translation of, 223.
Holliday, James, death of, 223.
Husband and wife, 153, 203, 212, 508, 570.

To entitle a husband to an estate as tenant by the curtesy, the wife must be seized in fact and in deed. It is not sufficient that she has a seisin in law of an estate of inheritance. Tayloe v. Gould, 60.

Hence, if there be an outstanding estate for life, the husband cannot be tenant by the curtesy of the wife's estate, in reversion or remainder, unless the particular estate be ended during the coverture. Ib.

There can be no seisin in fact of a vested remainder limited on a precedent freehold estate. Ib.

Where a life estate, and the immediate reversion, meet in the same person, the particular estate is merged in the greater estate; and if the two estates unite in a *feme covert*, her husband is entitled to a life estate, as tenant by the curtesy. Ib.

A limitation upon minorities is virtually a limitation upon lives. Ib.

I.

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Imprisonment for debt, 153.

Indictment, 208, 384, 630, 631, 677.

In an indictment an allegation of the mere evidence of a material fact, is not sufficient, but the fact itself must be stated. Connecticut *v.* Harris, 378.

The common law for the punishment of those who keep or frequent houses of ill-fame, is impliedly repealed in Connecticut by the "act concerning prisons," § 53, and the "act concerning crimes and punishments," § 87. Ib.

In Connecticut, an information coming to the County Court by appeal from a justice of the peace, cannot be amended. Ib.

Infant, 154, 266, 507.

A., an infant, hired a horse to go to B. and back the same day. He went to B., but returning by a circuitous route which nearly doubled the distance, and stopping at a house by the way, and leaving the horse without food or shelter from eight o'clock P. M. until four o'clock A. M., he did not come back until eight o'clock the next morning, and from this overdriving and exposure the horse died. *Held*, that this amounted to a conversion of the horse, for which the infant was liable. Towne *v.* Wiley, 266.

Information, 378.

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Innkeepers, common, 558, 634.

In an action against a common innkeeper by a guest, to recover for articles lost by fire, which happened without any negligence on the part of the inkeeper or his servants; *held*, that the action could not be sustained, as innkeepers are not liable for losses resulting from inevitable casualty or superior force. Merritt *v.* Claghorn, 558.

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A separate valuation, in a policy of insurance, of each parcel, bale or package of an article, is not equivalent to a separate insurance of each parcel, bale or package; and a total loss of four bales of an insured invoice of one hundred and four bales of cotton will not entitle the assured to recover from the assurers any thing under a policy containing the usual five per cent. clause, though each of the bales has been separately valued in the policy. Newlin et al. *v* Insurance Company, 557.

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At the trial of a cause by a special jury, it having been discovered during the examination of the first witness that there were thirteen jurors in the box, the Judge offered to dismiss one; but the defendant's counsel refusing to consent, and it being impossible to ascertain which of the jurors was sworn last, he discharged the jury, directed the special jurymen to be called over again, and tried the cause by the first twelve that answered: — *Held*, regular. Muirhead *v.* Evans. 147.

Quære, whether if it could have been ascertained which of the thirteen men in the box was the superflu-

ous juror, the proper course would not have been to turn him out of the box and let the trial proceed? Ib.
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Parent and child, 269, 385, 503, 572, 631.
Services rendered, goods sold, or money paid for or to a parent by a son, at the request of the former, will, when proven not to have been performed on the basis of father and child, but on that of master and servant, furnish a good cause of action. Steel, Executor *v.* Steel, 503.
Parol evidence, 87, 89.
(*See* EVIDENCE.)
Parol title to real estate, 514.
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Partners in a limited partnership, but with equal rights therein, held a hotel upon a lease that expired at the same time with the expiration of the copartnership. One of the partners, before the expiration of the partnership, took a new lease, or a renewed lease, of the hotel, in his own name and for his own benefit, without the assent or knowledge of his copartner. *Held*, that he must be deemed to have taken the lease for the benefit of the copartnership. Oakes *v.* Judson et al. 549.
Partners, rights and duties of, 549.
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Q.

Quo warranto, 542.
1. A writ of *quo warranto* will not issue on the filing of a suggestion, but must be preceded by a rule to show cause; and if issued without such rule, may be quashed. Commonwealth *v.* Jones, 542.
2. *Quo warranto* will lie against the mayor of a municipal corporation; but it issues at the discretion of the Court, which may inquire into the motives of the relators, and refuse it, even when there is a clear defect in the incumbent's title. *Ib.*

R.

Railroad conspiracy trial, the, 469.
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Referees, 611, 679.
One of three referees, before whom a cause is tried, cannot be sworn and examined as a witness on such trial. Morss *v.* Morss, 611.
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S.

Salaries of the English judges, 100.
Sale, 327, 512.
Sale, conditional, 387.
Salvage, 487.
Satisfaction, 213.
Scandal, 507.
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Search for lost deed, 212.
Seisin, 60.
The seizure of a vessel, which under a codfishing license had incidentally caught mackerel, is a municipal seizure, expressly provided for by acts of Congress as justifiable, if a certificate of probable cause is given. U. S. *v.* Reindeer, 235.
A certificate of probable cause will be given if the officer making the seizure acts in good faith, and has reasonable grounds to suppose that the law has been violated.
Set-off, 35, 503.
Sheriff, 513.
Ships and shipping, 80, 152, 451, 572.
A vessel which moors alongside of another at a wharf or elsewhere, becomes responsible to the other, for all injuries resulting from her proximity, which human skill or precaution could have guarded against. Vantine *v.* The Lake, 659.
The schooner L., on entering a dock at high tide, was directed by her consignees to be moored to an adjoining wharf of which they were lessees, outside of the M. J., a smaller vessel. There was not in the dock during part of the ebb, enough water for the L., though there was sufficient for the M. J.; of which fact the consignees, but not the master of the L, were aware. No objection was made at the time from the M. J, nor any caution given. On the tide receding, the L, on this account, and from the bottom of the dock being banked up in the middle from accidental causes (with which the consignees were also acquainted), careened over on the M. J., crushing her timbers, and causing her to fill and sink. As soon as the danger was perceived, a measure of prevention was suggested by the M. J., but rejected as useless. *Held*, that the L. was bound to know the depth of water in the dock, or at any rate was responsible for the directions of the consignees, who had full knowledge; and that she had not taken proper precaution before or after the injury. The L. condemned in damages. Ib.
Besides the costs of repairs in this case, charges for wharfage while repairing; for the time of one of the owners, and of the crew, in raising and clearing out the injured vessel; and for the loss of profits to the vessel while sunk, and during the time she was being repaired, allowed by the Court in the assessment of damages. Ib.
When master is owner, 200, 450.
Where a master sails a vessel on shares, and buys stores for the vessel of parties who do not know of the contract between the owners and master, the owners are liable. Webb *v.* Pierce, 200.
To relieve themselves from liability, the owners must show that the master was the owner for the time being. Ib.
To make the master such an owner, the general owners must have parted with all right to control the master or direct the employment of the vessel during the subsistence of the contract, and the master must be entitled to the exclusive control and direction of the vessel under his contract. Ib.
Where there is no written contract, and where no special terms are stated, it may be founded on and established by usage. Ib.

Authority of master, 80.

The master of a ship has no general authority, as such, to sign a bill of lading for goods which are not put on board the vessel; and consequently the owners of the ship are not responsible to parties taking a bill of lading which has been signed by the master without receiving the goods on board. Grant et al. *v.* Norway et al., 80.

Ship, re-arrest of the, when not permitted, 514.

Stipulation, 453.

Stipulator's liability, 453.

Rights of masters of vessels, of mariners, and of consul, under the Act of Congress of July 20, 1840, 421.

Under the Act of Congress of July 20, 1840, § 16, the phrase "to lay their complaints before the consul," applies only to such causes of complaint as are specified in the Act, viz. that the mariner is detained contrary to his agreement, or that the vessel is unseaworthy, &c., &c., and not to sudden affrays or quarrels between the officers and crew. Jordan *v.* Williams, 421.

The liberty given to the crew by said Act, to lay their complaints before the consuls, is to be exercised under the fair and reasonable discretion of the master of the vessel, as to the time and mode of landing; and a refusal of duty on the part of the crew, because such permission is not given, would be justifiable only when such refusal is necessary to prevent the loss of the right. Ib.

Since the passage of the Act of July 20, 1840, when the master of a vessel in a foreign port, lays a complaint against any of his crew fully and fairly before the consul, and the consul upon examination finds it expedient or necessary to make use of the local authorities to keep the men safely, the master is not responsible for their imprisonment as for a tort, the consul being answerable to the injured party for any malversation or abuse of power. Ib.

The detaining of the clothes of men imprisoned by the local authorities upon the request of the consul, by reason of information given him by the master, while still belonging to the vessel and also after their discharge therefrom, is a breach of duty on the part of the master. Ib.

Sims, Thomas, case of, 1.

Slander, 138, 573.

Privileged communications comprehend all statements made *bonâ fide* in performance of a duty, or with a fair and reasonable purpose of protecting the interest of the person making them. Somerville *v.* Hawkin, 138.

A communication being shown to be privileged, it lies on the plaintiff to prove malice in fact; in order to entitle him to have the question of malice left to the jury, he need not show circumstances necessarily leading to the conclusion that malice existed, or such as are inconsistent with its non-existence, but they must be such as raise a probability of malice, and be more consistent with its existence than with its non-existence. Ib.

The plaintiff had been a servant to the defendant, and dismissed by him on a charge of theft. He afterwards came to the defendant's house to be paid his wages, and had some communication with the defendant's servants, on which occasion the defendant said to his servants, "I discharged the man for robbing me; do not speak any more to him in public or private, or I shall think you as bad as he:"—*held*, a privileged communication, and that there was no evidence of malice to go to the jury. Ib.

Solicitor, joint, 508.

Specific performance, 35, 204, 205.

Sprague, Judge upon the constitution of the fugitive slave law of 1850, 158.

State tax on United States' property, 222.

Star, the, 487.

Statute of Frauds, 33, 633.

Statutes, construction of—rules for. United States *v.* Weise.

Statute of Feb. 18, 1793, construction of, 235.

Statute, repeal of, 450.

Stealing from the person, 203.

Story Association, the, 218.

Story, Joseph, life and letters of, 585, 589.

Story, Joseph, miscellaneous writings of, 586.

Stover, Petitioner, 454.

Sunday acts.

A., on Sunday, let a horse to B. to go to C. for a pleasure drive. B. did not go to C., but went to a different place, and by a route which varied materially from the route to C. The horse was killed by over-driving. In an action by A. against B., to recover the value of the horse, it was *held*, that, under the Sunday acts of Massachusetts, the action could not be maintained. Gregg v. Wyman, et al., 361.

No action can be maintained where the plaintiff, in making out his case, is obliged to prove an illegal act as a link in the chain of evidence. Ib.

Supreme Court of the United States, new rule of the, 582.

Surrogate, power of, 679.

T.

Taxes, 39, 90, 635.

Taxes on real and on personal estate 551.

Where a party is rightfully taxed for any personal estate, or for any real estate, his remedy for any excess of taxation is by application for an abatement, in conformity with the provisions of Revised Statutes, chap. 7; whether the excess arises from including in the valuation, property of which the person taxed is not the owner, and for which he is not liable to be assessed, or from placing an undue and disproportionate value on that of which he is the owner. Howe v. City of Boston, 551.

Personal and real estate are each regarded as a distinct and separate class or subject of taxation, and the validity of a tax on either is to be determined by itself irrespective of the other. Ib.

Illegal tax, 329.

Tax title, 393

Tax, right of a State to, property of the United States, 260.

How far a State has power to tax the forts, navy-yards, custom-houses, or other property of the United States used for the necessary purposes and operations of government — *Quære?* United States v. Weise, 260.

But granting such power or right to the State, it cannot be enforced by levying and seizing the personal property of the United States, or that of their officers and servants. Ib.

The Pennsylvania statute of 29 April, 1844, does not authorize the assessment of taxes upon the property of the United States within her limits. Ib.

The telegraph case, 526.

Tenancy in common, 326, 625, 635.

Tenant by the curtesy, 60.

Where a tenant at will of a dwelling-house holds over his term, and thereupon the landlord forcibly enters and ejects him, his family and effects, from the house, under the Vermont statute of forcible entry and detainer, the entry is unlawful, and the landlord is subject to fine and to pay damages to the tenant, who may recover them in an action of trespass *quare clausum*. Dustin v. Cowdry, 186.

The first story, basement and cellars of a store, with the appurtenances, were leased to A.; and the remaining stories of the same store, with the appurtenances, were leased to B. The only front entrance to the basement was through a hatchway, which took up most of the landing at the foot of the stairway, which was the only means of access to the upper stories, and through which hatchway, by a tackle and fall attached to the top of the building and used on all the floors, goods were lowered into the basement. B. fastened down the hatchway, and cut off the fall rope, so as entirely to deprive A. of a front entrance to the basement. The partition between the entryway in which was the said hatchway and staircase, and the first story of the store occupied by A., consisted of folding doors, provided with bolts on both sides, which during the day A. threw open in order to display his goods. B. fastened these folding doors, and thereby deprived A. of that access to his store, and of that means of displaying his goods. In an action by A. against B. for damages for the obstructions to the hatchway and folding doors: *held*, that A. had a right, 1st, to use the fall and to keep open the hatchway while actually and in good faith using it to let down or take out goods; and 2d, that he had a right to control the folding doors in the daytime and during business hours without interference by B., A. and B. having each, at night, to bolt them for the security

of their respective premises. Browning et al. *v.* Dalesme, 60.

The jury in the Court below having assessed no damages for the injury done by closing the folding doors, none can be assessed in the Superior Court. Ib.

Tender, 326, 591, 673, 675.

Tender under a statute, 499.

In an action against a town to recover damages sustained by reason of an obstruction in a highway, a tender by the defendants, before action brought, of a certain sum to the plaintiff in full for his damages, and a payment of the same into Court on the return-day of the writ, admits the plaintiff's cause of action, and all that it is necessary for him to prove in order to sustain it. Bacon *v.* Charlton, 499.

Texas, crime in, 583.

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Time, 208.

Tort, 266.

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Towns, authority of, 210.

Trade marks, 664.

Treason, the law of, 410.

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Trespass, 32, 38, 328.

Trespass quare clausum, 186.

Trover, 155, 266.

Trust, 151.

Trust, breach of, 213, 508.

Trust estate, 515.

Trustee, 35, 508, 635.

Trustee process, 329, 369, 390.

By the Revised Statutes of Massachusetts, (ch. 109, § 78,) it is provided, that "If any person summoned as trustee, shall, upon his examination on oath, knowingly and wilfully answer falsely, he shall, out of his own goods and estate, pay to the plaintiff in the foreign attachment, the full amount due on the judgment recovered therein, with interest therefor, to be recovered in a special action on the case:" *held*, that to maintain such an action, the evidence of a single witness, without further proof, direct or circumstantial, is insufficient. Laughran *v.* Kelly, 369.

Where, in a trustee process, the supposed trustee, either in the original suit, or as defendant in *scire facias*, voluntarily makes answers under oath, which answers are material to the question of his liability as trustee, instead of filing his general answer or pleading to the action, such answers constitute a part of his examination, and if false, render him liable to the action under the statute. Ib.

U.

Uncertainty, 508.

Usage, 155, 200.

Usury, 392.

V.

Vendor and purchaser, 39, 155, 210. 632, 636.

Valuable consideration, purchaser for, 212.

Videlicet, 211.

W.

Way, 40.

To maintain a suit against a town for the recovery of damage, sustained through a defect in its highway, it must be proved, that the highway was not safe and convenient; that the plaintiff exercised ordinary prudence and care; and that the injury was occasioned by the defect in the highway alone. Moore *v.* Abbot, 656.

In such a suit, if it appear that the injury was occasioned jointly by a defect in the highway and a delinquency in the plaintiff's horse, carriage, or harness, rendering the same unsafe or unsuitable, the plaintiff cannot recover, although he had no knowledge of such deficiency, and was in no fault for the want of such knowledge. Ib.

When an injury is occasioned by the united effect of a defect in the way, and some other cause, the party, bound to keep the road in repair, is not liable. Ib.

In order to a recovery, it must be proved that the injury was occasioned solely by the neglect of the defendants, and not by the neglect of the town combined with another cause, for which they were not responsible. Ib.

An injury cannot be held to have

been caused by a defect in the highway, when some other cause contributed to it. Ib.
Webster case, the, in England, 97.
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Witness, competency of, 449. (*See* Evidence.)
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Woodbury, Mr. Justice, 349.
Woodbury, death of Judge, 330.
Woodbury, tribute to the memory of Judge, 400.
Writ, indorsement of, 392.
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